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LEGAL BUSINESS STRUCTURES IN TEXAS

HOUSTON ONE STOP BUSINESS CENTER, P.O. Box 1562, Houston, Tx. 77251 - PH: 713-247-2982

The Filing Fee for Articles of Incorporation is \$300. The Secretary of State (SOS) registers Corporate Names, Limited Partnerships, Limited Liability Companies, Certificate of Authority, Non-Profit Agencies, Statewide D.B.A's (name) and others. The legal structures for business available in Texas are as follows. ***Please note that the following information DOES NOT constitute legal advice.***

For more information: www.sos.state.tx.us/corp/businessfaqs.shtml

SOLE PROPRIETORSHIP

A sole proprietorship exists when a single individual operates a business owning all assets, is personally liable for all debts and business ownership is non-transferable. Under a sole proprietorship, the life of the proprietorship is limited to the life of the individual proprietor. The sole proprietorship makes no legal distinction between personal and business debts, and it does not require a separate income tax return.

GENERAL PARTNERSHIP

A general partnership exists when two or more individuals or businesses join to operate a business. Under the general partnership, a separate business entity exists, but creditors can still look to the partner's personal assets for satisfaction. General partners often share equally in assets and liabilities. The general partnership requires an annual partnership income tax return (separate from the partners' personal returns).

CORPORATION

A corporation is created when one or more individuals, partnerships or owners join together to form a separate entity for the purpose of operating a business in Texas. A corporation has its own legal identity, separate from its owners. The corporation safeguards the business owners' personal assets. Taxation of the corporation varies depending on the type of corporation formed- C Corporation or S Corporation. A C Corporation is often times taxed at a rate higher than an individual. The owners are not taxed personally for profits; however, the owners do pay personal taxes on any salaries and/or dividends and the corporation is also taxed on the dividends. Owners of an S Corporation may personally deduct losses the same as a partnership. The S Corporation also offers alternative methods for distributing the business income to the owners, and there is no added cost to the incorporation process.

LIMITED LIABILITY COMPANY, LLC

A limited liability company is an unincorporated business entity which shares some of the aspects of S corporations and limited partnerships, and yet has more flexibility than some more traditional business entities. The limited liability company provides its owners with limited liability and pass-through tax advantages without the restrictions imposed on S corporations and limited partnerships.

LIMITED PARTNERSHIP

A limited partnership is a partnership formed by two or more persons or entities, and having one or more general partners and one or more limited partners. General partners share equality in debts and assets while limited partners have limited debt obligations.

REGISTERED LIMITED LIABILITY PARTNERSHIP

A general partnership registered with the Secretary of State is a "registered limited liability partnership". A partner's liability in a registered limited partnership differs from that in an ordinary partnership. In a registered limited liability partnership, a partner is not individually liable, under some circumstances, for debts and obligations of the partnership arising from errors, omissions, negligence, incompetence, or malfeasance committed in the course of the partnership business by others in the partnership.

A professional tax consultant, accountant and/or attorney should be consulted before determining which legal structure best suits the requirements of the business and its owner(s). Once the legal structure of the business has been determined, the next step is to complete the necessary registration requirements.

REGISTERING A BUSINESS NAME IN TEXAS - State Requirements

All businesses operating as corporations in Texas must file articles of incorporation with the Office of the Secretary of State of Texas. If the corporation will transact business under names other than that stated in the articles of incorporation, the corporation needs to file an assumed name certificate with the Secretary of State, and with the county clerk in which the principal office and registered office of the corporation is located. The Secretary of State will perform a name search to verify that no other corporation in Texas is using the exact name selected. (This check is for corporate names only and does not include DBA filings.) To find out if a corporation is already using the name chosen, call the Secretary of State at 512-463-5555. Office personnel can do an immediate computer search to see if the name has been reserved.

Corporations, limited partnerships, and limited liability companies organized in other states or countries may transact business in Texas by obtaining a Certificate of Authority through the Secretary of State. The Corporation Section (Secretary of State) can provide forms for the certificate of authority. An out-of-state business may consider the option of creating a Texas corporation, limited partnership, or limited liability company for transaction of business in Texas.

Other forms of business entities required to file with the Secretary of State includes limited partnerships, registered limited liability partnerships, limited liability companies, professional corporation, professional associations and non-profit corporations. The Secretary of State provides a summary of the requirements for creation of these entities but does not provide forms for organizational documents except for registration of a limited liability partnership.

The Secretary of State publishes the *Filing Guide*, which offers guidelines for business organization document filing requirements. The Guide also includes administrative rules and sample forms promulgated by the Secretary of State. The current cost of the guide is \$25 and may be purchased directly from the Secretary of State.

FOR FURTHER INFORMATION CONTACT:

Office of the Secretary of State
Corporations Section
P.O. Box 13697
Austin, Texas 78711-3697

OR CALL:

General Information / Name Searches	512-463-5555 (Call before 9 a.m. or after 4 p.m.)
TDD	800/735-2989
FAX	512/463-5709
Copies and Certificates	512-463-5578
Trademarks	512-463-5576
Blank Filing Forms	512-463-5586
Corporate Legal Staff	512-463-5586
"Direct Access" for Business Regulation	512-475-2755 (Charge for On-line Service)
FORMS ONLINE:	www.sos.state.tx.us/corp/business.shtml

TEXAS DECEPTIVE TRADE PRACTICES ACT

HOUSTON ONE STOP BUSINESS CENTER, P.O.Box 1562, Houston, Tx. 77251, Ph. 713-247-2982

TEXT AVAILABLE AT WEBSITES:

www.texasbar.com

library.law.smu.edu/resguide/dtpa.htm

What Is The "Deceptive Trade Practices Act"

The Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA") was enacted on May 21, 1973. The full text can be found starting at section 17.41 of the Texas Business and Commerce Code. The primary purpose of the DTPA is to protect consumers against false, misleading, and deceptive business and insurance practices, unconscionable actions, and breaches of warranty. It does so by prohibiting certain acts and practices that tend to deceive and mislead consumers.

The DTPA provides for both public enforcement and private remedies. Public enforcement is done by the Texas Attorney General, who can seek a court order prohibiting further deceptive practices. A private citizen may seek redress for damages caused by certain specific acts and practices listed in the DTPA. Because the DTPA is very broad and is constantly being interpreted by the courts, it is impossible to explain its complete meaning and impact in this short handbook. If you believe that you are the victim of a deceptive trade practice, please consult an attorney.

Which Transactions Does the DTPA Apply To?

Most consumer transactions are covered by the DTPA. Although the DTPA does not cover every deceptive or unconscionable act or practice, it is quite broad. The DTPA provides that "false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

The DTPA prohibits certain acts or practices "in the conduct of any trade or commerce." This is a very broad provision. "Trade and commerce" means "the advertising, offering for sale, lease, or distribution of any good or service, or any property, tangible or intangible, real, personal, or mixed, any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this state." The term "goods" includes tangible things or real property purchased or leased for use. The word "service" includes work, labor, or services purchased or leased for use, including services furnished in connection with the sale or repair of goods. The DTPA does not apply to the rendering of a professional service, the essence of which is the providing of advice, judgment, opinion or similar professional skill.

The term "unconscionable" appears frequently in the DTPA, and in this handbook. The DTPA defines an "unconscionable action" as one that "takes advantage of the lack of knowledge, ability, experience, or capacity of a person to a grossly unfair degree."

Who Is Entitled To Protection Under the DTPA?

Other than the Texas Attorney General, only consumers are allowed to file under the DTPA. The phrase "consumer" means an individual, partnership, corporation, or governmental entity who seeks or acquires by purchase or lease any goods or services. It does not cover a business consumer that has assets of \$25 million or more or that is owned or controlled by a corporation or entity with assets of \$25 million or more.

The Element of Knowledge or Intent

The DTPA makes many practices illegal without requiring proof that the defendant intended to do something

wrong or illegal. Unless the section involved requires otherwise, the consumer is not required to prove that the defendant "intentionally" or "knowingly" violated the DTPA. This makes it easier to prove a violation of the DTPA, and provides a strong incentive for sellers of goods and providers of services to refrain from engaging in the prohibited acts and practices.

Nevertheless, the DTPA provides that if a defendant acts "intentionally," the judge or jury may award the consumer "additional damages" in an amount not exceeding three times the actual damages suffered by the consumer.

What Is Included Within the "Laundry List" of Acts and Practices Made Illegal by the DTPA?

The DTPA contains a "laundry list" of specific practices that are prohibited. This laundry list is found in section 17.46(b) of the Texas Business and Commerce Code. It contains 25 acts that violate the DTPA and for which consumers may sue, if the consumers relied on the act to their detriment. These twenty-five acts are described in the pamphlet and web pages referred to at the conclusion of this document.

What Remedies Are Available Under the DTPA?

The remedies of the DTPA are not exclusive. Instead, they are in addition to remedies provided in other laws. In fact, violations of certain other laws may also constitute violation of the DTPA. You may not, however, recover under the DTPA and under some other law for the same alleged wrong. In other words, you cannot recover twice for one violation.

Remedies under the DTPA may not usually be waived, and an attempt to make a consumer waive DTPA remedies is expressly made void and unenforceable unless specific requirements are met. This provision is particularly important when consumers buy goods "As Is." Often, consumers may still be able to recover under the DTPA even if the consumer buys the goods "As Is." If you have such a situation, you should seek the advice of an attorney.

For Further Assistance:

If you do not know an attorney to handle your case, ask a friend or an associate for a recommendation. Also, you may locate one through your local Lawyer Referral Service listed in your telephone directory, or through the State Bar Lawyer Referral Service by calling (toll free) 1-800-252-9690.

This information is not intended to be a substitute for the legal advice of a licensed attorney. If you have any questions regarding a particular issue or topic we suggest you seek legal counsel.

MLM & BUSINESS OPPORTUNITIES

HOUSTON ONE STOP BUSINESS CENTER, P.O. Box 1562, Houston, Tx. 77251-1562; Ph. 713-247-2982

FROM: www.oag.state.tx.us/AG_Publications/txts/busop.shtml

Under the Texas Business Opportunity Act, a business opportunity is regulated by the law if:

It requires you, the buyer, to pay \$500 or more to start the business, AND the seller promises you will earn or are likely to earn a profit exceeding the initial investment, AND the seller promises any one of the following:

- * the seller will provide locations or help you find locations on property not owned by either you or the seller for the use of or operation of the products, equipment, supplies, or services the seller is leasing or selling;
- * the seller will provide a sales, production, or marketing program; this does not apply to businesses that have registered trademarks;
- * the seller will buy back any products, supplies, or equipment purchased, or any product made, fabricated, grown or bred by the purchaser using equipment or products sold or leased by the seller.

A business opportunity meeting these criteria must be registered with the Secretary of State before the seller advertises it or offers it for sale. The law also requires the principal seller to provide all of the following information to the Secretary of State.

Disclosure Requirement

Under the Texas Business Opportunity Act, the seller must provide you with the following information at least 10 days before you sign a contract or turn over any money to the seller:

- * The names and addresses of all persons affiliated with the seller in this particular business;
- * A copy of a current financial statement of the seller;
- * A complete description of the actual services the seller agrees to perform for the purchaser;
- * If training is promised, a complete description of the training, length of training, and cost of travel or lodging during the training;
- * If services are promised in connection with placement of equipment or products, the full nature of the services and the nature of agreements to be made with the owners or managers of business locations;
- * If the seller or his or her representatives have been adjudged bankrupt or have been subject to a judgment in a civil suit involving fraud or embezzlement during the past seven years, he or she must tell you;
- * If the seller makes representations about sales or earnings potential, he or she must disclose both the total number of people participating in the business opportunity for the past three years and the total number of people who have actually achieved the represented sales or earnings within the past three years.
- * Cancellation. The seller must give you the following statement in writing as part of the disclosure requirement: If the seller fails to deliver the product, equipment, or supplies necessary to begin substantial operation of the business within 45 days of the delivery date stated in your contract, you

may notify the seller in writing and cancel your contract.

Precautions

Promises are frequently made as a "come on" to sell the business opportunity by giving it the appearance of a no-lose proposition. But it is not that easy to set up a new business and make money. The more money the seller says you can make, the more you should investigate those claims for accuracy.

A legitimate seller will want to ask you many questions to see if you have a good opportunity for success. A legitimate seller will not be offended if you ask questions about successful participants in the business opportunity he or she is offering for sale. Many people have lost their entire investment by not checking first.

If the business opportunity seller promises purchasers that they are assured of making profit, he or she is required to secure a bond or trust account of \$25,000 in favor of the State of Texas. Before buying a business opportunity, check with the Secretary of State to see if the company is registered and whether such a bond has been filed.

Multi-Level Marketing (MLM)

Today, a popular type of sales program is "multi-level marketing" (MLM) or "network marketing." Many of these programs do not fall within the guidelines of the Texas Business Opportunity Act, so the sellers do not have to register with the Secretary of State or comply with the disclosure requirements. Such plans do offer people an opportunity to earn money and they should be evaluated just as closely as any other type of business opportunity.

Generally, MLM plans allow you to recruit salespeople for your own sales team, who then recruit additional members. You receive commissions from sales made by your team. Team members down the line also get commissions from members below them. There are many legitimate MLM operators in Texas. However, it is a field in which there are many shady operators and questionable sales programs. Some are nothing more than pyramid schemes.

Under the Texas Deceptive Trade Practices Act, you may not promote a pyramid promotional scheme. A pyramid promotional scheme is plan or operation by which a person gives consideration for the opportunity to receive compensation that is derived primarily from a person's introduction of other persons to participate in the plan or operation, rather than from the sale of a product by a person introduced into the plan or operation. This means that, for an MLM plan to be legal, commissions must come from the retail sale of a good and not from the recruitment of people to the sales team.

Besides being a civil deceptive trade practice, pyramid promotion is a state jail felony punishable by imprisonment in a state jail for up to two years and by a fine of up to \$10,000.00.

Tips to Help You Evaluate MLM's

- * Be skeptical of programs that can only be successful if new recruits continually join the sales organization. Are you required to recruit new people as a condition of joining the organization or can you earn money simply by selling the product?
- * Before you join, be sure the product offered is something for which there is a market. Ask what the average monthly retail sales are per salesperson. Be wary of anyone who tells you that you do not have to sell anything to make money. For it to be legitimate, commissions must come from the retail sales of goods, so at some point someone will have to sell something.
- * If the program you are considering does not provide distributors with a contractually enforcement right to a 90% refund of commercially resalable product within one year of the purchase of the product by the distributor, the program may be an illegal pyramid, not a multi-level distributorship.
- * Be extremely careful and wary of buying business opportunities out of weekend seminars given in local hotels or advertised on late night television infomercials. If you buy from a hotel seminar, you must be given a notice of a three day right to cancel.
- * Be wary of a sales pitch that includes promises of high rewards with little effort.

(GSP-07A.WPD, 9-04)

BUSINESS WARRANTIES

HOUSTON ONE STOP BUSINESS CENTER, P.O. Box 1562, Houston, Tx. 77251-1562; Ph. 713-247-2982

THE MAGNUSON-MOSS WARRANTY ACT (MMWA) PROVIDES SPECIFIC GUIDELINES FOR CONSUMER RELATED WARRANTIES. IT COVERS ALL WARRANTY TYPES, INCLUDING: IMPLIED, EXPRESS, FULL AND LIMITED. EXPRESS WARRANTIES AND ORAL REPRESENTATIONS ARE COVERED BY FEDERAL AND STATE LAW, INCLUDING THE TEXAS DECEPTIVE TRADE PRACTICES ACT (DTPA). CONTACT THE FEDERAL TRADE COMMISSION, OFFICE OF CONSUMER AND BUSINESS EDUCATION, AT 202-326-3650., AND ASK FOR THE BOOKLET, "WRITING READABLE WARRANTIES".

FOR MORE INFORMATION: www.ftc.gov/bcp/conline/pubs/buspubs/warranty.htm

SECTION 701.3 WRITTEN WARRANTY TERMS

Any warrantor warranting to a consumer by means of a written warranty a consumer product actually costing the consumer more than \$15 shall clearly and conspicuously disclose in a single document in simple and readily understood language, the following items of information:

The identity of the party or parties to whom the written warranty is extended, if the enforceability of the written warranty is limited to the original consumer purchaser or is otherwise limited to persons other than every consumer owner during the terms of the warranty;

A clear description and identification of products, or parts, or characteristics, or components or properties covered by and where necessary for clarification, excluded from the warranty;

A statement of what the warrantor will do in the event of a defect, malfunction, or failure to conform with the written warranty, including the items or services the warrantor will pay for or provide, and, where necessary for clarification, those which the warrantor will not pay for or provide;

The point in time or event on which the warranty term commences, if different from the purchase date, and the time period or other measurement of warranty duration;

A step-by-step explanation of the procedure the consumer should follow in order to obtain performance of any warranty obligation, including the class of persons authorized to perform warranty obligations. This includes the name(s) of the warrantor(s), together with: The mailing address(es) of the warrantor(s), and-or the name or title and the address of any employee or department of the warrantor responsible for the performance of warranty obligations, and-or a telephone number which consumers may use without charge to obtain information on warranty performance; Information respecting the availability of any informal dispute settlement mechanism elected by the warrantor in compliance with Part 703¹ of this subchapter;

Any limitations on the duration of implied warranties, disclosed on the face of the warranty as provided in Section 108¹ of the Act, accompanied by the following statement: *Some States do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.*

A statement in the following language: *This warranty gives you specific legal rights, and you may also have other rights which vary from state to state.*

¹ - Part 703 and Section 108 of the Act can be found in many libraries. Call the Houston Central Library at 713-236-1313 for details.

Many of the rules and regulations regarding warranties and the sales of goods or products also apply to warranties arising out of a service transaction. Express or implied warranties often arise out of a service provider's claim regarding the quality of a particular service being rendered. See information sheet on the Texas DTPA (included).

(GSP-07B.WPD, 11-02)

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IMPORT / EXPORT RESOURCES

HOUSTON ONE STOP BUSINESS CENTER, P.O. BOX 1562, Houston, Tx. 77251, Ph.: 713-247-2982

International Trade Resources

EXPORT-IMPORT BANK OF THE U.S. (EXIM BANK) 281-721-0467

www.exim.gov

1880 S. Dairy Ashford II, #585, 77077. An independent federal banking corporation established in 1934 to aid in financing exports & imports, as well as the exchange of commodities between the U.S. and foreign nations. It offers direct credit to borrowers outside the U.S. as well as export guarantees, export credit insurance, and discount loans.

INTERNATIONAL BUSINESS INFO CENTER, Greater Houston Partnership 713-844-3600

www.houston.org

1200 Smith St., #700, 77002. Intl. Trade Library has business publications and country-specific demographic and economic information.

INTERNATIONAL TRADE ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE 713-454-8000

www.ita.doc.gov

500 Dallas, #1160, 77002. The ITA assists in exporting, including licensing, financing, statistics, analysis, and market research. The ITA is responsible for increasing the export of U.S. goods and services, and develops and provides to American exporters and investors comprehensive data and assistance in international trade. Request the pamphlet "Export Programs: A Directory of U.S. Government Resources". The ITA also publishes "Business America", a magazine detailing export opportunities. For information on Federal export resources, call the Trade Information Center (TIC) toll-free at 800-872-8723.

INTERNATIONAL TRADE CENTER, UH SMALL BUSINESS DEVELOPMENT CENTER 713-752-8404

2302 Fannin, #200. The International Trade Center is a division of UH's Small Business Development Center which assists small and medium-sized Texas companies explore and develop business potential in world markets. The ITC offers consulting services, education, and access to international networking, e.g. trade missions, and seminars.

JETRO HOUSTON (JAPANESE EXTERNAL TRADE ORGANIZATION) (713-759-9595)

www.jetro.go.jp/usa/houston/

1221 McKinney, #4141, 77010. JETRO is a source of data and information for exporting to Japan.

PORT OF HOUSTON / HOUSTON FOREIGN TRADE ZONE 713-670-2604

www.portofhouston.com

P.O. Box 2562, 77252. The Port of Houston publishes a database of consulates, shippers, freight forwarders, and other relevant information for import/export. The Houston FTZ offers land and warehouse space suitable for appropriate zone uses. In addition, the Houston FTZ (713-670-2400) offers facilities and services for storage, transportation, and distribution of cargo and goods. Other area FTZ's include Galveston (409-766-6117), Beaumont (409-835-5367), Freeport (979-233-2667), Liberty County (936-592-8786), and Texas City (409-948-3111).

TEXAS DEPARTMENT OF AGRICULTURE, MARKETING DIVISION 512-463-7624

www.agr.state.tx.us

P.O. Box 12847, Austin 78711. The DOA Marketing Division provides counseling and information on international agricultural trade, including trade shows and missions.

TEXAS DEPT. OF ECONOMIC DEVELOPMENT (TDED)

512-936-0249, TDD: 512-936-0555

www.marketplace.state.tx.us

P.O. Box 12728, Austin 78711. The OTIR at the TDED exists to help position Texas as a globally competitive economic region. OTIR assists Texas businesses in gaining access to world markets through trade shows, facilitation of export counseling, trade leads, trade-related research and analysis, and partnerships with entities such as the U.S. Department of Commerce and